

#6



Memo

From the desk of Jon Lachel
Office of Patent Publication
Pre-Grant Publication Division

2231 Crystal Drive
Crystal Park 3
Suite 905
Arlington, VA 22202
Voice (703) 605-4285
Fax (703) 305-8568

To: Krista Zele, TC2600
CPK-2, 8A 35

From: Jon Lachel
CPk-3/905

Date: November 4, 2002

**RE: Valid Proof of Notification of PCT and Request To Rescind
Non Publication Request for File 09872753 in Question**

Krista,

Here is the file for Pre Grant Publication Application 09/872,753.

Joni Chang asked you to take a look at the customer's situation. Customer questioned why their application's status was still showing "non-publication" as they claimed to have sent a "Request To Rescind Non-Publication Request" 6/28/02.

No evidence of receipt of their document to rescind in the file.

Customer sent me copies of their fax confirmation from their 6/28/02 transmittal for the request (additionally, conversation did not advance to whether proper notification of their PCT was received due to the question surrounding the receipt of the "rescind non-pub" fax).

Lachel, Jon

From: Zele, Krista
Sent: Saturday, November 02, 2002 4:49 AM
To: Lachel, Jon
Subject: RE: Request to Rescind for 09872753 Valid?

Jon, please have the file clearly labeled for me (Krista Zele, TC 2600 SPRE, CPK2- 8A 35) if you have it delivered. Otherwise, let me know if you want me to come pick it up Monday. I'll be happy to take care of it. - K

-----Original Message-----

From: Chang, Joni
Sent: Friday, November 01, 2002 1:37 PM
To: Lachel, Jon
Cc: Zele, Krista
Subject: RE: Request to Rescind for 09872753 Valid?

Hi Jon,

Please send the request to Krista Zele. The applicant has to file a petition to establish that the original request to rescind was timely filed within the 45 day period.

Please let me know if you have any questions. Thanks.

-----Original Message-----

From: Lachel, Jon
Sent: Friday, November 01, 2002 11:38 AM
To: Chang, Joni
Subject: Request to Rescind for 09872753 Valid?

Joni,

Karolyn Koppen, a Banner and Witcoff employee, called me on October 9 to check on why their application still had its original status of "Non-publication" as they claimed to have submitted a "Request to Rescind Request for Non-Publication" on 06/28/02 (due to their filing a PCT).

The application file does not provide any evidence that a request had been received in paper or electronic form.

Ms. Koppen in turn sent me a copy of a fax dated 6/28/02 sent to **fax # 703-308-6606**, addressed to Examiner Matthew Kim concerning "Request to Rescind Previous NonPublication Request." She also provided me a copy of their "Auto Reply Facsimile Transmission" which provides the sender (Banner and Witcoff) with confirmation of a successful transmission. When I asked, Examiner Kim said the fax number was incorrect and that 7037467239 or 7037467240 are used for TC2100 incoming documents. I sent a "test" document and then received a call from **TC2600** Customer Service Office indicating my fax was received by them.

I had Banner and Witcoff resubmit their Request to Rescind so I could enter their application back into the publication queue due to the failure of their "original" notification to reach the proper PTO receptacle.

However, given the rules concerning notification to the PTO of their PCT filing, is their copy of the Auto Reply sufficient as proof to avoid having to file a Request to Revive and meet the 45 day notification requirement?

Jon Lachel

Lachel, Jon

From: Lachel, Jon
Sent: Friday, November 01, 2002 11:38 AM
To: Chang, Joni
Subject: Request to Rescind for 09872753 Valid?

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However, given the rules concerning notification to the PTO of their PCT filing, is their copy of the Auto Reply sufficient as proof to avoid having to file a Request to Revive and meet the 45 day notification requirement?

Jon Lachel

Lachel, Jon

From: Lachel, Jon
Sent: Wednesday, October 09, 2002 5:01 PM
To: 'kkoppen@bannernwitcoff.com'
Subject: Patent Application 09872753 Request to Rescind

Ms. Koppen,

I finally was able to view the paper file for evidence of the Request to Rescind a Non-Publication Request as you had requested. I did not see your request in the file.

It is important that if you or your firm received a receipt in the form of a postcard (or other means) confirming that the document was received, we would want to receive a facsimile of that date stamped copy. Your application is affected by the filing of PCT/US02/16951. You may have to file a Request to Revive as 09872753 may be considered abandoned if you exceeded the 45 day notification window.

The Request to Rescind's effect should normally appear in PAIR. However, given the lack of this document in the file, this may explain why PAIR does not reflect it.

Please advise.

Jon Lachel
USPTO
Pre Grant Publication Division



BANNER & WITCOFF, LTD.
INTELLECTUAL PROPERTY LAW

601 S.W. SECOND AVENUE
SUITE 1900
PORTLAND, OREGON 97204

TEL: 503.279.6330
FAX: 503.279.6328
www.bannerwitcoff.com

FACSIMILE TRANSMITTAL SHEET

TO:
Mr. John Lachel

FROM:
Karolyn Koppen

COMPANY:
U.S. Patent and Trademark Office

DATE:
October 10, 2002

FAX NUMBER:
703-305-8568

TOTAL NO. OF PAGES (INCLUDING COVER SHEET):
5

YOUR REFERENCE No.:
App. No. 09/872,753

OUR REFERENCE (C/M) No.:
005146.00005

RE:
Request to Rescind Previous Nonpublication Request

If you do not receive all page(s) or have any problems receiving this transmission, please call:

NAME: Karolyn

PHONE: (503) 279-6330

COMMENTS:

Mr. Lachel,

In response to your email, following are copies of:

- (1) Request to Rescind Previous Nonpublication Request, as originally faxed to the PTO on 6/28/02;
- (2) PTO Auto-Reply Facsimile Transmission (6/28/02); and
- (3) Corrected Filing Receipt, dated 9/19/02.

If you need anything further, please let us know.

Thanks again,

Karolyn

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CHICAGO

WASHINGTON, D.C.

BOSTON

PORTLAND, OR

PTO/SB/36 (10-01)

Approved for use through 10/31/2002. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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REQUEST TO RESCIND PREVIOUS NONPUBLICATION REQUEST 35 U.S.C. 122(b)(2)(B)(ii)		Application Number	09/872,753
		Filing Date	June 1, 2001
		First Named Inventor	Gregory Scott Friedman et al.
		Title	SYSTEM AND METHOD FOR PROGRESSIVE AND HIERARCHICAL CACHING
		Atty Docket Number	005146.00005
		Group Art Unit	2186
		Examiner	Matthew M. Kim

I hereby rescind the previous request that the above-identified application not be published under 35 U.S.C. 122(b).

June 28, 2002

Date

Thomas L. Evans
Signature

Thomas L. Evans, Reg. No. 35,805

Typed or printed name

This request must be signed in compliance with 37 CFR 1.33(b).

Note: Filing this rescission of a previous nonpublication request is considered the notice of a subsequent foreign or international filing required by 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) if this rescission is filed no later than forty-five days (45) days after the date of filing of such foreign or international application. See 37 CFR 1.137(f) if a notice of subsequent foreign or international filing required by 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is not filed within forty-five days (45) days after the date of filing of the foreign or international application.

CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner For Patents, Box PG Pub, Washington, DC 20231, or facsimile transmitted to the U.S. Patent and Trademark Office on: June 28, 2002 (via facsimile - 703-308-6606)

Name (Print/Type) Thomas L. Evans

Signature *Thomas L. Evans*

Date

June 28, 2002

Burden Hour Statement: This collection of information is required by 37 CFR 1.213(b). The information is used by the public to rescind a previously filed request that an application not be published under 35 U.S.C. 122(b) (and the PTO to process that rescission). Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This form is estimated to take 6 minutes to complete. This time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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WASHINGTON, D.C. 20231
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APPLICATION NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLAIMS	IND CLAIMS
09/872,753	06/01/2001	2186	420	05146.00005	4	15	1

22909
BANNER & WITCOFF, LTD.
1001 G STREET, N.W.
WASHINGTON, DC 20001-4597

RECEIVED

SEP 23 2002

CONFIRMATION NO. 9903

CORRECTED FILING RECEIPT



OC00000008811548

BANNER AND WITCOFF

Date Mailed: 09/19/2002

Receipt is acknowledged of this nonprovisional Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Filing Receipt Corrections, facsimile number 703-746-9195. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s)

Gregory Scott Friedman, Sammamish, WA;
Coyle Brett Marl, Seattle, WA;

Assignment For Published Patent Application

ViAir, Inc.;

Domestic Priority data as claimed by applicant

Foreign Applications

If Required, Foreign Filing License Granted 08/02/2001

Projected Publication Date: 12/26/2002

Non-Publication Request: No

Early Publication Request: No

Title

System and method for progressive and hierarchical caching

Preliminary Class

05146.00005
DOCKETED
SEP 24 2002
Filing Receipt
Received

711

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Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15**

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NOT GRANTED

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Lachel, Jon

From: Lachel, Jon
Sent: Thursday, October 10, 2002 12:13 PM
To: 'kkoppen@bannerwitcoff.com'
Subject: RE: Patent Application 09872753 Request to Rescind

You can fax it to me at 703-305-8568.

Jon Lachel

-----Original Message-----

From: kkoppen@bannerwitcoff.com [mailto:kkoppen@bannerwitcoff.com]
Sent: Thursday, October 10, 2002 12:01 PM
To: Jon.Lachel@USPTO.GOV
Subject: RE: Patent Application 09872753 Request to Rescind

Mr. Lachel,

Thanks so much for your reply.

We received a Corrected Filing Receipt (mailed 9/19/02) which gives a Projected Publication Date of 12/26/02 for this application. Since we have received a corrected filing receipt with a publication date, I would imagine that the PTO has received the Request we filed, via facsimile, on 6/28/02.

We would be happy to fax a copy of the Request as it was originally filed, along with a copy of the PTO's Auto-Reply Facsimile Transmission which confirms receipt of 2 pages faxed on 6/28/02.

Please let me know what our next step, if anything, should be.

Your assistance is greatly appreciated.

Sincerely,

Karolyn Koppen
Assistant to Tom Evans
Banner & Witcoff, Ltd.
Tel: 503-279-6330
www.Kkoppen@bannerwitcoff.com

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Sent: Wednesday, October 09, 2002 2:01 PM
To: Karolyn Koppen